

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FILED/ACCEPTED

AUG 17 2011

Federal Communications Commission
Office of the Secretary

In re)
)
MARITIME COMMUNICATIONS/LAND) EB Docket No. 11-71
MOBILE, LLC) File No. EB-09-IH-1751
) FRN: 0013587779
)
Participant in Auction No. 61 and Licensee of)
Various Authorizations in the Wireless Radio)
Services)
)
Applicant for Modification of Various) Application File Nos. 0004030479,
Authorizations in the Wireless Radio Services) 0004144435, 0004193028, 0004193328,
) 0004354053, 0004309872, 0004310060,
) 0004314903, 0004315013, 0004430505,
Applicant with ENCANA OIL AND GAS (USA),) 0004417199, 0004419431, 0004422320,
INC.; DUQUESNE LIGHT COMPANY; DCP) 0004422329, 0004507921, 0004153701,
MIDSTREAM, LP; JACKSON COUNTY) 0004526264, 0004636537,
RURAL MEMBERSHIP ELECTRIC) and 0004604962
COOPERATIVE; PUGET SOUND ENERGY,)
INC.; ENBRIDGE ENERGY COMPANY,)
INC.; INTERSTATE POWER AND LIGHT)
COMPANY; WISCONSIN POWER AND)
LIGHT COMPANY; DIXIE ELECTRIC)
MEMBERSHIP CORPORATION, INC.;)
ATLAS PIPELINE – MID CONTINENT, LLC;)
DENTON COUNTY ELECTRIC)
COOPERATIVE, INC. , DBA COSERV)
ELECTRIC; AND SOUTHERN CALIFORNIA)
REGIONAL RAIL AUTHORITY)

To: Marlene H. Dortch, Secretary
Attention: Chief Administrative Law Judge Richard L. Sippel

ENFORCEMENT BUREAU'S
MOTION TO COMPEL MARITIME TO RESPOND TO THE BUREAU'S
OUTSTANDING DISCOVERY REQUESTS

1. On July 6, 2011, the Enforcement Bureau ("Bureau") properly served a first set of interrogatories and document requests on Maritime Communications/Land Mobile LLC ("Maritime"). Pursuant to Sections 1.323 and 1.325 of the Commission's Rules, Maritime's responses to these two discovery requests were originally due on July 21 and July 22, 2011,

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respectively.¹ On July 15, 2011, Maritime filed a motion seeking nearly a *four-week* extension – until August 12, 2011 – to submit both of its responses.² The Bureau (and presumably the Presiding Judge) appropriately understood this as Maritime’s commitment to provide responses to the Bureau’s initial discovery requests on August 12, 2011. In the meantime, on August 1, 2011, the Bureau properly served on Maritime a second set of interrogatories and document requests. Maritime’s responses to this second set were due on August 15 and August 16, 2011, respectively.³ Because Maritime had not filed any additional motions for extension to respond, the Bureau expected to receive responses to its first set of discovery on August 12 and to its second set of discovery on August 15 and 16. These deadlines have now come and passed – Maritime did not serve *any* responses to the Bureau’s outstanding discovery requests.

2. Maritime’s only explanation⁴ for its refusal to provide responses to the Bureau’s discovery requests is that, on August 1, 2011, it filed a motion requesting the Presiding Judge to defer all procedural dates in this proceeding based solely on its representations that it had voluntarily filed for bankruptcy protection and intended, at some undefined time in the future, to seek *Second Thursday* treatment of as yet unidentified transactions.⁵ Such explanation provides

¹ See 47 U.S.C. §§ 1.323 and 1.325.

² See Maritime’s Motion for Extension of Time to Respond to the Enforcement Bureau’s Initial Discovery Requests, filed July 15, 2011.

³ See 47 U.S.C. §§ 1.323 and 1.325.

⁴ Prior to filing the instant Motion, the Bureau reached out to Maritime to inquire whether it had inadvertently forgotten to provide the Bureau with courtesy copies via email of its responses to the Bureau’s first set of discovery requests, which Maritime had committed to serve on August 12. In response, Maritime left the Bureau a voicemail explaining not only that it had not “made a commitment” to provide its responses to the Bureau’s requests on August 12 simply by requesting an extension from the Presiding Judge until that date, but also that it would not provide discovery responses now that it had “filed a motion to defer all procedural dates.”

⁵ See Maritime’s Motion to Defer All Procedural Dates, filed August 1, 2011. The Bureau opposed this motion as premature primarily on the grounds that it is unclear whether all of the issues designated for hearing will be addressed by Maritime’s planned *Second Thursday* filing. In fact, Maritime’s Reply to Oppositions to Motion to Defer Procedural Dates, filed on August 16, 2011, still fails to confirm that Maritime intends to assign all of the licenses pending in the hearing as part of the *Second Thursday* process. Instead, Maritime continues to suggest that Maritime intends to sell only some of the licenses that have been designated for hearing and thus to seek *Second Thursday* treatment for only those transactions. This would leave in the hearing substantial and material questions

no lawful basis whatsoever for Maritime to simply ignore or evade its obligations as a party in this hearing.

3. Maritime's mere filing of a request to defer the procedural dates does not automatically release Maritime from its pending discovery obligations. Indeed, this should have been evident to Maritime from the Presiding Judge's August 10, 2011 Order – released *after* Maritime filed its motion requesting deferral – which compelled Maritime to serve supplemental responses to the Bureau's Requests for Admission by August 19, 2011.⁶ Nevertheless, without waiting for the Presiding Judge to rule on its deferral motion, Maritime decided on its own that it did not need to fulfill its pending discovery obligations. In essence, Maritime unilaterally granted itself the very deferral of the hearing's procedural dates – including the discovery deadlines – which it requested from the Presiding Judge. However, the authority to decide whether the procedural dates in this hearing should be deferred, and thus whether any party is relieved of its obligations to meet procedural and discovery deadlines, rests exclusively with the Presiding Judge. Maritime's decision to usurp this authority and to confer upon itself a "pass" on meeting the pending discovery deadlines was entirely improper and patently inconsistent with the Commission's procedural rules.

4. Based on the foregoing, the Bureau hereby respectfully requests that, unless otherwise instructed by the Presiding Judge in response to Maritime's motion to defer the procedural dates, Maritime should be compelled to provide forthwith its responses to the Bureau's outstanding discovery.

of fact concerning Maritime's qualifications to be and to remain a licensee of the remaining licenses. Thus, Maritime's *Second Thursday* petition would not appear to eliminate the need for a hearing.

⁶ See Order, FCC 11M-23 (ALJ, rel. August 10, 2011). Based on the position Maritime is taking with regard to the Bureau's pending discovery requests, the Bureau would expect Maritime to seek relief from complying with this Order so that it may again delay providing discovery to which the Bureau is rightfully entitled.

Respectfully submitted,

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August 17, 2011

CERTIFICATE OF SERVICE

Makia Day, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 17th day of August, 2011, sent by first class United States mail copies of the foregoing "ENFORCEMENT BUREAU'S MOTION TO COMPEL MARITIME TO RESPOND TO OUTSTANDING DISCOVERY REQUESTS" to:

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